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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

THE PILGRIM HOLINESS CHURCH CORPORATION, A CORPORATION,
Petitioner,
v.
JAMES P. MITCHELL, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,
Respondent.

CAUSE No. 721

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF

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PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, The Pilgrim Holiness Church Corporation, a corporation, respectfully prays that a writ of certiorari be issued out of and under the seal of this Court to review the final judgment of the United States Court of Appeals for the Seventh Circuit entered in the above en-

titled cause on the 23rd day of February, 1954, reversing the judgment of the United States District Court for the Southern District of Indiana, Indianapolis Division, in favor of this petitioner.

JURISDICTION

Jurisdiction to review this case on writ of certiorari is conferred upon this Court by the Judicial Code Act of June 25, 1948, Chapter 646, 62 Stat. 928, 28 U. S. C. A. Sec. 1254 (1).

The opinion of the Court of Appeals was filed February 23, 1954.

No petition for rehearing was filed.

OPINIONS BELOW

There was no written opinion by the District Court. Its judgment dismissing plaintiff's amended complaint appears in the Record. (R. 48)

The opinion of the Court of Appeals for the Seventh Circuit is unreported and is in the printed record (R. 57), but afterward was amended by a partial deletion and a substitution for the part deleted. (R. 68)

QUESTIONS PRESENTED

1.

Did Congress intend the Fair Labor Standards Act of 1938 as amended (hereinafter referred to as the Act) to apply, and, fairly construed, does such Act apply, to petitioner, a religious society organized for, and engaged in, publishing the Gospel by preaching from the pulpits of its Churches and Missions, and printing its religious materials

at its headquarters in Indianapolis, Indiana, and distributing such materials throughout most of the States of the United States and many foreign lands?

2.

If said Act be construed to apply to petitioner, a religious society, organized for the purpose of, and engaged in, teaching and spreading the Gospel both by preaching from the pulpit and printing and distributing the printed Word, does said Act, as applied to petitioner, violate the First Amendment of the Constitution of the United States in that the Act prohibits the free exercise of religion?

STATUTE INVOLVED

The provisions of the Fair Labor Standards Act of 1938 as amended, Tit. 29 (U. S. C. A., § 201 et seq.) which are involved in this matter, are set out in the appendix to this petition. (p. 15)

SUMMARY STATEMENT

This case, commenced in the United States District Court for the Southern District of Indiana, Indianapolis Division, involves the question whether the Secretary of Labor is entitled to a decree enjoining petitioner, defendant below, a religious organization, from allegedly violating the minimum wage, overtime compensation, and record keeping provisions of the Fair Labor Standards Act of 1938 as amended.[1]

Defendant moved (R. 7) the District Court to dismiss the amended complaint (R. 3) under Rule 12 (b) of the Federal Rules of Civil Procedure upon the ground that

[1] Act of June 25, 1938, c. 676, 52 Stat. 1060, 29 U. S. C. A. 201 et seq., as amended by the Fair Labor Standards Amendments of 1949, c. 736, 63 Stat. 910, 29 U. S. C. A., Supp. V, et seq.

the amended complaint failed to state a claim against the defendant upon which relief could be granted. The plaintiff moved for a summary judgment under Rule 56 of the Federal Rules of Civil Procedure upon the ground that there was no genuine issue as to any material fact, and prayed judgment in his favor as a matter of law. (R. 9)

The District Court treated defendant's motion to dismiss as a motion for summary judgment, to be disposed of as provided in Rule 56 of the Federal Rules of Civil Procedure. Concluding that there was no genuine issue as to a material fact, the District Court, upon an affidavit filed by the plaintiff (R. 9) and counter-affidavits filed by the defendant (R. 18-42), held that the defendant was entitled to judgment as a matter of law, and dismissed the suit (R. 48). The United States Court of Appeals for the Seventh Circuit reversed the judgment of the District Court and ordered that the cause be remanded for further proceedings not inconsistent with the opinion of the Court of Appeals. (R. 67) The mandate of the Court of Appeals was stayed by Judge Swaim pending petitioner's application for certiorari to the Supreme Court. (R. 71)

STATEMENT

Respondent, as Secretary of Labor, sues here (Amended Complaint, R. 3) to enjoin petitioner from the alleged violation of Sections 6, 7, 11 (c), and 15 (a) (2) and 15 (a) (5) of the Fair Labor Standards Act of 1938 as amended. (Act of June 25, 1938, c. 676, 52 Stat. 1060; U. S. C. A. Tit. 29, Sec. 201, et seq., as amended, 63 Stat. 910).

It is established by the affidavits filed by petitioner under Rule 56 of the Federal Rules of Civil Procedure that:

(a) Petitioner is a church, a religious corporation, organized under the laws of the State of Indiana (R. 18) for the purpose:

> "To glorify God our Father, exalt Jesus Christ, our Savior, and to honor the Holy Spirit; to carry out the great commission of our heavenly ascended Head by publishing the full Gospel to every nation, to promote the Christian Religion, and the diffusion of morals and religious knowledge, and to conserve the Holiness work by forming churches and missions * * * and in every way possible help to get the souls ready for the coming of our Lord, and conduct world wide Gospel work." (R. 36)

(b) As a part of its general organization petitioner has a General Board as a governing body and, among others, the following Departments: Church Extension, Home Missions, Foreign Missions, Sunday School, Editorial and Education Department and Printing Department. (R. 19) Its General Headquarters are at 230 East Ohio Street, Indianapolis, Indiana. (R. 18) It has approximately 1,200 local churches and missions situate throughout the United States and divers foreign countries. (R. 19) All of its various Departments are organized and function as a whole to carry out the single purpose of spreading the Gospel of Jesus Christ. (R. 19)

(c) Its Printing Department supplies its various other Departments, Sunday Schools and Missions with the necessary literature and printed materials for carrying on the Gospel work. (R. 19)

(d) In the local churches and missions are maintained Sunday Schools, which require supplies of divers kinds,

and distribute the printed matter produced by the Church, such as lesson sheets, quarterlies, church papers, revival materials, camp meeting literature and such, all designed to fit into the one great purpose of spreading the Gospel both by preaching from the pulpit and by the printed Word. (R. 19)

(e) Petitioner's workers at its General Headquarters include several ordained ministers. (R. 24, 25, 32 and 34)

There are in the record the affidavits of nineteen workers. Summarized, these affidavits are to the effect that such workers do not regard their services to petitioner as a job performed for wages, but that such workers consider themselves engaged in "a work for the Lord" performed out of their "desire to do something to get the Gospel to others" and "by way of the printed Word." (R. 24 to 33)

(f) Of the $118,602.93 value of printed matter produced in the twenty-five month period here involved, all but $13,861.46 was for the religious use of petitioner. (R. 20) Of its Sunday School materials, a small amount, estimated to be less than 3%, was sold to other Church organizations to be used in their Sunday School work. Excepting for a few items, approximately $100.00 worth, of secular materials (R. 21) that were inadvertently printed by petitioner's workers without the knowledge or approval of petitioner (R. 22), all of such $13,861.46 was religious material produced by petitioner in co-operation with other like religious organizations. (R. 20)

Upon appeal by respondent to the Court of Appeals, that Court reversed. (R. 66)

In reversing, the Court of Appeals in its opinion stated and held: (R. 57; amendment to opinion R. 68)

1.

(1) That petitioner is subject to control under the provisions of the Act.

(2) That the Act applies to petitioner's workers engaged in operating its Printing Department and all other workers whose work was necessary to the production and distribution of the printed matter produced by petitioner.

(3) That the application of the Act to petitioner does not prohibit the free exercise of religion by petitioner as forbidden by the First Amendment of the Constitution of the United States. (For First Amendment, see Appendix to this Petition, p. 19)

(4) That the application of the Act to petitioner's workers who work in the production, printing, handling, addressing, and distributing of the printed matter issued by the petitioner does not violate the provision of the First Amendment of the United States Constitution by prohibiting the free exercise of religion.

JUDGMENT

The judgment of the Court of Appeals, rendered February 23, 1954, was that the judgment of the District Court is reversed and that the cause is remanded to the District Court for further proceedings not inconsistent with the opinion of the Court of Appeals filed on that day. (R. 67)

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

I.

The Court of Appeals decided an important question of federal law which has not been, but should be, determined by this Court.

The Court of Appeals decided that the petitioner, an incorporated Church organized to engage, and engaged, in religious activities, and because of such activities, is subject to the provisions of the Act; that by its literal terms the Act applies to petitioner and its workers so engaged in their religious activities; and that such application of the Act does not violate the provisions of the First Amendment of the Constitution of the United States forbidding the Congress to enact any law prohibiting the free exercise of religion.

Petitioner asserts:

(a) That petitioner and its such workers are not within the intent and meaning of the Act.

(b) That the application of the Act to petitioner and its such workers violates the provision of the First Amendment forbidding the enactment by the Congress of any law prohibiting the free exercise of religion.

The application of the provisions of the Act to a Church and its such workers has never been determined by this Court, but should be.

This question is one of great importance to the Christian Churches carrying on their religious activities in the United States and in foreign countries; to public officials charged with the duty to administer the Act; and to the great body of the people in the United States who are interested in the continuance and furtherance of religious work.

Upon the answer to the question whether the petitioner and its such workers are subject to the Act, depends the continuance or destruction, or great impairment, of organized religious work as it is carried on today by the Churches of the United States.

It affects not only the work done by the Churches of this country at their general headquarters, but reaches out into all the local Churches and Missions, and into practically every field of Christian work. This is so because, for centuries past, and in this present, a vast and important part of the religious work of the Churches in the United States has been and is being done by lay members who voluntarily donate, and who desire to donate, their services, in whole or in part, to their Church.

This Act, if applied to religious societies, will prohibit a vast number of these workers from donating any part of their services to religious work, and religion will be deprived thereby of this vast body of support.

The Act Does Not By Its Terms Apply to Petitioner

The declared reason of the Congress for enacting the Fair Labor Standards Act of 1938 as amended was to correct detrimental labor conditions *"in industries."*

Congress, in and by the Act, stated that it found, as a fact, that the existence of labor conditions *"in industries"* were detrimental in stated respects and that such labor conditions *"in industries"* affected interstate commerce.

The declared purpose of the Act was to correct and eliminate as rapidly as possible such conditions "in industry."

Sec. 8 of the Act, 29 U. S. C. A. Sec. 202 (a) and (b).

To correct or eliminate such detrimental labor conditions "in industries" the Congress provided by the Act for the establishment of an "industry committee" in each industry, which "industry committee" should investigate "conditions in the industry," hear witnesses and receive evidence to enable the industry committee to perform its duties and functions under the Act, one of which was to

recommend to the administrator of the Act the highest minimum wage rates "for the industry" without substantially curtailing employment "in the industry," or give "a competitive advantage to any group in the industry." The Act provides also that the "committee for any industry" should recommend classifications "within any industry." Sec. 8 of the Act, 29 U. S. C. A., Sec. 208.

The Act applies to "industries" and only to industries.

The Act, by its terms, applies only to industries engaged in commerce or the production of goods for commerce.

"Industry" is a branch of trade or business employing capital and labor for profit.

Churches are not "industries."

As Applied to Petitioner and Its Workers the Act Prohibits the Free Exercise of Religion and Thus Violates the First Amendment

The application of the Act to petitioner and its workers to whom the Court of Appeals held the Act applicable would:

(a) Limit the number of hours petitioner's workers may devote to petitioner's religious work.

(b) Prohibit such workers from working in their and petitioner's religious activities in spreading the Gospel unless such workers are paid the wages fixed by the Act.

(c) Prohibit such workers from giving gratis any of their time and talents to the religious work of petitioner, and petitioner from receiving and accepting the same.

(d) Prohibit such workers from participating in petitioner's religious work unless a strict record or account

is kept by petitioner of all the time devoted by its workers to such work.

Petitioner asserts that there is no free exercise of religion left if a Department of the Government can limit the time petitioner and its workers may devote to its religious work, and entirely prohibit its workers from engaging in this religious work if they are not paid the wage required by the Act, and that the Court of Appeals decided a question of Federal law of vast importance which has not been, but should be, determined by this Court.

II.

The Court of Appeals Decided a Federal Question in a Way Probably in Conflict With Applicable Decisions of This Court

The Court of Appeals decided in this case that the application of the Act to petitioner, a religious society, does not prohibit the free exercise of religion and thus does not violate that provision of the First Amendment of the Constitution of the United States.

Petitioner asserts that this decision of the Court of Appeals is in conflict with the applicable principles announced by this Court in the following decisions:

Jamison v. State of Texas (1943), 318 U. S. 413, 416, 63 S. Ct. 669, 672;

Murdock v. Commonwealth of Pennsylvania (1944), 319 U. S. 105, 108, 63 S. Ct. 870, 872;

Follett v. Town of McCormick (1944), 321 U. S. 573, 576, 64 S. Ct. 717, 719;

Tucker v. State of Texas (1946), 326 U. S. 517, 520, 63 S. Ct. 274, 275.

The foregoing cases did not involve this Act, but did involve other statutory enactments which were considered by the Court in respect of the safeguarding by the First

Amendment of rights to the free exercise of religion. In all of these four cases this Court reversed the judgment of the Courts below because such judgments deprived each of the defendants of his constitutional right to the free exercise of religion under the First Amendment.

In these cited cases this Court announced and settled these fundamentals, namely:

(a) Freedom of religion is a right "in a preferred position," in virtue of the First Amendment.

(b) When the person who claims his constitutional right to the free exercise of religion is engaged in a "religious" venture rather than in a "commercial" enterprise, the constitutionality of the statutory enactment involved may not be measured by the same standards as those governing the operations of one engaged in a purely commercial enterprise.

(c) Freedom of religion is not reserved for those merely who have a long purse.

(d) One is not engaged in a commercial undertaking because his work in spreading the Gospel is the economic means of his subsistence.

(e) Under the First Amendment, the right of one to spread the Gospel by means of the printed word and the distribution of it is not distinguishable from the right to spread the Gospel by means of the spoken word of the preacher from the pulpit.

(f) The power of Government, by pecuniary impositions, by statutory enactments or acts of public officers under them, to curtail the free exercise of religion is the power of government to control or suppress the enjoyment of the constitutional privilege.

It is a matter of common knowledge, of which this Court will take judicial notice, that the organized Christian Churches have great difficulty in obtaining funds adequate to their needs to sustain and advance their religious work.

It is a matter of common knowledge, of which this Court will take judicial notice, that all churches are required to depend largely upon voluntary contributions of the labor and moneys of its members and of its friends who are interested in the preaching and teaching of the Gospel and the spread of it.

The application of the Act to Churches would impose an insuperable burden upon the Churches of this Country by compelling them to meet large payrolls in addition to the indispensable expenses incurred in their activities essential to the achievement, in any measure, of their religious purpose.

Since because of the First Amendment an enactment of Congress may not prohibit the free exercise of religion, it may not subtract any substantial part of that which is essential to the free exercise of religion, including the scriptural commandment, "Go ye therefore, and teach all nations."

It is shown by the Record (R. 22) that petitioner exists by reason of the donations of service and funds by its members and friends and that to impose fixed obligations for the outlay of funds beyond the means available would not only impair and limit its functions as a religious organization, but might well prevent its continued success.

Obedience to the scriptural commandment may be given by the use of the printed Word as well as by the spoken Word.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court to the United States Court of Appeals for the Seventh Circuit commanding said Court to certify and send to this Court a transcript of the record and proceedings in this cause, to the end that this cause may be reviewed and determined by this Court; that the judgment of the Court below be reversed; and that the petitioner be granted such other and further relief as may be just and proper.

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APPENDIX

Fair Labor Standards Act of 1938 As Amended
(Title 29, U. S. C. A., Sec. 201 et seq.)

FINDING AND DECLARATION OF POLICY.

Sec. 202. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

Sec. 202. (b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries

without substantially curtailing employment or earning power.

DEFINITIONS.

Sec. 203. As used in this Act—

(b) "Commerce" means trade, commerce, transportation, *transmission*, or *communication* among the several States or between any State and any place outside thereof.

(g) "Employ" includes to suffer or permit to work.

ADMINISTRATOR.

Sec. 205. (a) The Administrator shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under Section 6 to employes in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce, or the Administrator may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees therein engaged in commerce or in the production of goods for commerce in particular industries. * * *

MINIMUM WAGES.

Sec. 206. (a) Every employer shall pay to each of his employees who is engaged in commerce

or in the production of goods for commerce wages at the following rates—

(1) Not less than 75 cents an hour.

MAXIMUM HOURS.

Sec. 207. (a) Except as otherwise provided in this section, no employer shall employ any of his employees who is engaged in commerce or in the production of goods for commerce for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

WAGE ORDERS IN PUERTO RICO AND THE VIRGIN ISLANDS.

Sec. 208. (b) Upon the convening of any such industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, may hear witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due

regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands.

INVESTIGATIONS, INSPECTIONS, RECORDS, AND HOMEWORK REGULATIONS.

Sec. 211. (c) Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such period of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder.

PROHIBITED ACTS.

Sec. 215. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) To transport, offer for transportation, ship, deliver, or sell with

knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of Section 6 or section 7, or in violation of any regulation or order of the Administrator issued under section 14; * * *

(2) To violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Administrator issued under section 14.

(5) To violate any of the provisions of Section 11 (c) or any regulation or order made or continued in effect under the provisions of section 11 (d), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

RELIGIOUS AND POLITICAL FREEDOM.—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; * * * *

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CAUSE

No. ____

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

JURISDICTION

Jurisdiction to review this case upon writ of certiorari is conferred upon this Court by the Judicial Code, Act of June 25, 1948, c. 646, 62 Stat. 928, 28 U. S. C. A. Sec. 1254 (1).

STAY OF MANDATE

On application of this petitioner (R. 69), an order was made by the Court of Appeals on March 9, 1954 staying its mandate pursuant to Rule 25 of the Court of Appeals, pending the filing of this petition for certiorari. (R. 71) Afterward upon the written stipulation of the parties the Court of Appeals, on April 3, 1954, enlarged the stay of mandate to and including the 30th day of April, 1954, pending the filing of this petition for certiorari.

OPINIONS BELOW

No written opinion was given or filed by the District Court.

The original opinion of the Court of Appeals, written by Swaim, Circuit Judge, was filed February 23, 1954 (R. 57) and is as yet unreported.

On February 25, 1954, the Court of Appeals amended its opinion by deleting therefrom the last sentence on page 2 of its original opinion which extends over to the first line on page 3 thereof and inserting in its place the following sentence: "During this same two year period the printing department of the church corporation did work having a total dollar value of $118,602.93." (R. 68)

STATEMENT OF THE CASE

A statement of the case has been made in the petition for certiorari herein (pp. 4-6), and for brevity such statement is not here repeated.

ERRORS RELIED ON

The Court of Appeals erred as follows:

1.

In holding that the Fair Labor Standards Act of 1938 as amended is, by its terms, applicable to petitioner, a religious society.

2.

In holding that the application of said Act to petitioner and its workers does not violate the First Amendment of the United States Constitution guaranteeing the free exercise of religion.

SUMMARY OF ARGUMENT

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1. The Act does not by its terms apply to petitioner, a Church organization, but applies only to industries. A Church is not an industry 28

2. Petitioner is not engaged in commerce or in the production of goods for commerce but is engaged in evangelism 29

3. The application of the Act to petitioner would violate the First Amendment of the United States Constitution forbidding an Act by Congress prohibiting the free exercise of religion, in that it would limit the number of hours petitioner and its workers could devote to its religious work; prohibit petitioner's workers from giving gratis to petitioner any of their time for religious work and would prohibit such workers from working for petitioner at all unless paid the wages fixed by the Act; would compel petitioner to put on its pay roll and pay wages to many workers who now donate all of their services and thus impose upon petitioner an insuperable expense beyond its ability to meet 31

4. The decision of the Court of Appeals is in conflict with four applicable decisions of the Supreme Court; namely, Jamison v. State of Texas (1943), 318 U. S. 413, 63 S. Ct. 669; Murdock v. Commonwealth of Penn. (1943), 319 U. S. 105, 63 S. Ct. 870; Follett v. Town of McCormick (1944), 321 U. S. 573, 64 S. Ct. 717; Tucker v. State of Texas (1946), 326 U. S. 517, 66 S. Ct. 274 33

ARGUMENT

Petitioner is a corporation duly organized and incorporated as a religious society under the laws of the State of Indiana. It is engaged in teaching and spreading the Gospel both by preaching from the pulpit and by the printed word.

Petitioner, at its General Headquarters in Indianapolis, Indiana, prints much of its religious materials which it distributes through its various Departments, its local Churches and Missions, in most of the States of the United States and in foreign lands.

It is claimed by respondent that this printing and distribution of its religious materials renders petitioner subject to regulation under the Fair Labor Standards Act of 1938 as amended (hereinafter referred to as the Act) and is unlawful unless petitioner complies with the provisions of the Act. The Court of Appeals for the Seventh Circuit sustained respondent's contention, and reversed the judgment of the District Court in favor of petitioner.

Two controlling, ultimate questions are presented:

1.

Does the Act, properly construed, apply to petitioner, a religious society, in teaching and spreading the Gospel?

2.

Does the application of the Act to petitioner and its workers violate the First Amendment of the United States Constitution in that the Act as applied to petitioner and its workers prohibits the free exercise of religion?

Consideration of the first question involves the inquiry: Did Congress intend the Act to apply to religious societies?

In Church of the Holy Trinity v. United States (1892), 143 U. S. 457, 459, the Court said:

> "It is a familiar rule that a thing may be within the letter of the statute and yet not within the spirit, nor within the intention of its makers."

The provisions of this Act seem to disclose that it was not the intention of Congress that the Act apply to churches and their workers. By the explicit language of the Act Congress found the existence of certain undesirable conditions "in industry", which conditions it was the object of the Act to eliminate. An "industry committee" for each industry was created, and by Sec. 8 (b) such Committee was required to recommend to the administrator the highest minimum wage rates for the industry, having due regard to economic and competitive conditions that would not substantially curtail employment in the industry, and which would not give a competitive advantage to industries in Puerto Rico or in the Virgin Islands over an industry in the United States outside of Puerto Rico or the Virgin Islands and (Sec. 8 (c)) which would not "give a competitive advantage to any group in the industry". These provisions obviously could not have been intended to apply to a religious society.

It is obvious that the term "industry" is used in the Act in the popular sense and refers to a branch of trade or business employing capital and labor for profit, and does not embrace evangelism. Religious work, teaching the Gospel, is not "industry".

> People v. Kelley (1931), 225 N. Y. 396, 175 N. E. 108;
> Western Pennsylvania Hospital v. Lichliter (1941), 340 Pa. 382, 17 Atl. 2d 206, 209;

City of Coos Bay v. Aerie No. 538 (Colo. 1946), 175 Pac. 2d 389, 399;

Gardner v. Trustees Methodist Church (Iowa 1932), 244 N. W. 667, 668;

City of Rochester v. Rochester Girls Home (1922), 194 N. Y. Supp. 236;

Jewish Hospital of Brooklyn v. Doe (1937), 252 Appellate Division 581, 300 N. Y. Supp. 1111, 1116, 1118.

Even if church work were considered to be "industry", any law of Congress or regulation thereunder the effect of which would be to eliminate competition between the several church denominations would violate the constitutional provision forbidding any law respecting the establishment of religion.

Petitioner, as a part of its work, is engaged in the production and distribution of religious literature. Distribution of religious literature is evangelism.

Murdock v. Commonwealth of Pennsylvania (1943), 319 U. S. 105, 110, 63 S. Ct. 870, 873.

Petitioner is not engaged in commerce. Petitioner is engaged in presenting the Gospel of the Kingdom, both by preaching from the pulpits of its churches and missions and in printed form; and petitioner's workers are likewise engaged. That petitioner's workers sustain themselves by this work does not transform their work into industry or commerce. An evangelist does not become a mere book agent by selling the Bible or religious tracts to defray his expenses.

Follett v. Town of McCormick (1944), 321 U. S. 573, 576, 64 S. Ct. 717, 719.

The mere fact that religious literature is sold rather than donated does not transform evangelism into a commercial enterprise.

Murdock v. Commonwealth of Pennsylvania (1943), 319 U. S. 105, 111, 63 S. Ct. 870, 874.

At, and ever since, the founding of this Government there has been demonstrated a public reverence for God. The free exercise of religion has been protected not only by the United States Constitution but by the Constitution of many of the several States. Congress opens its sessions with prayer for Divine guidance. Would it be reasonable to assume that the Congress of the United States should seek Divine guidance in its work and then proceed to make a law intended to deny to the people of the United States the right freely to spread God's word to others?

Petitioner's purpose is to preach and teach and to carry the Gospel to all men, by the spoken Word, from the pulpit, and by the printed Word produced at and distributed from its general headquarters.

The object of petitioner is the saving of souls.

If the printing and distributing of this religious material by petitioner might be thought to come within the letter of the Act, surely it does not come within the spirit of the Act. Not being within the spirit of the Act, it follows that Congress did not intend that the Act should apply to a religious organization, such as petitioner, and its workers, engaged in teaching, in increasing, and in widening knowledge of the Gospel, and creating an increased reverence for God, whether by the printed or by the spoken Word.

The Church is not an industry; it is not an enterprise engaged in business; and the Fair Labor Standards Act of 1938 as amended is not applicable to your petitioner and its such workers.

3.

Does the application of the Act to petitioner and its workers violate the First Amendment of the United States Constitution in that the Act prohibits the free exercise of religion?

The application of the Act to petitioner and its workers would:

(a) Limit the number of hours petitioner's workers may devote to petitioner's religious work.

(b) Wholly prohibit such workers from engaging in petitioner's religious activities in spreading the Gospel unless such workers are paid the wages fixed by the Act.

(c) Prohibit such workers from giving gratis any of their time to the religious work of petitioner.

(d) Prohibit such workers from participating in petitioner's religious work unless a strict account is kept by petitioner of all the time devoted to such work.

It would seem from the mere enumeration of these limitations and prohibitions that the Act would impose upon petitioner and its workers engaged in their religious undertakings would require the conclusion that the Act could not apply to religious work without violating the First Amendment of the United States Constitution.

When we consider further the broad effect the application of the Act would have upon religious work, it would seem clear that the application of the Act to petitioner and its workers would not only prohibit the free exercise of religion by this petitioner and its workers, but would totally destroy a very large part of religious work as it is carried on today, and has been carried on for many years.

Under Sec. 3 (g) of the Act anyone who is suffered or permitted to work is an employe. Under the decisions

(See Walling v. Goldblatt (1942), 128 F. 2d 778) those active in the procurement and in the receipt of materials from outside their state would come under the Act. Thus all out-state local church workers who participate in the religious work and procure or receive religious material from the General Church would have to be on petitioner's pay rolls and paid wages in accordance with the Act, and records of the time they worked kept by petitioner as provided by the Act.

When it is recalled that this Church has about 1200 local Churches, and many Missions, which receive and distribute its printed religious materials, it will be seen that not fewer that 1200 workers, and perhaps 3600 or even more workers, would be brought within the provisions of the Act as to the payment of hourly wages and overtime compensation, in addition to which a vast amount of record making and accounting work would be required of petitioner, even assuming that it would be possible for petitioner to make accurate records as required by the Act. Thus an insuperable expense would be laid upon petitioner, clearly beyond its ability to meet.

It is a matter of common knowledge that the work of practically all church denominations extends across state lines, so that a very large part of church workers would participate in activities crossing state lines.

Churches generally, and this petitioner in particular, (R. 22) exist by reason of the donations of the services and money of members and friends. If this Act is applied to petitioner, then petitioner may no longer receive such services so donated. Petitioner can act only through its workers, and if these workers must be paid wages as required by the Act and petitioner has no funds with which to pay such wages, it would follow that petitioner cannot

continue its work, and would be prohibited from fulfilling its purpose and executing the scriptural command: "Go ye therefore and teach all nations". Matt. 28:19.

There is a special significance in those words "all nations" when considered in connection with the present controversy. To teach "all nations" there must be "communications" with all nations. For Congress to impose controls and conditions upon those communications would prohibit freedom to execute such command and be a direct violation of the First Amendment.

We, therefore, believe that the Court of Appeals erred when it held that the application of the Act did not violate the First Amendment of the Constitution of the United States and does not prohibit the free exercise of religion; and petitioner believes that the decision of the Court of Appeals is in conflict with the applicable principles announced by this Court in the following decisions:

Jamison v. State of Texas (1943), 318 U. S. 413, 63 S. Ct. 669;

Murdock v. Commonwealth of Penn. (1943), 319 U. S. 105, 63 S. Ct. 870;

Follett v. Town of McCormick (1944), 321 U. S. 573, 64 S. Ct. 717;

Tucker v. State of Texas (1946), 326 U. S. 517, 66 S. Ct. 274.

In all of these four cases this Court reversed the judgment of the Courts below because the defendants in each of them were deprived of their constitutional rights to the free exercise of religion under the First Amendment.

Believing that this case involves questions of far reaching importance to all people interested in the survival of churches and religious work and that the questions in-

volved have been erroneously decided by the Court of Appeals, this petitioner prays that its petition may be granted and this cause heard by this Honorable Court.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 721

THE PILGRIM HOLINESS CHURCH CORPORATION, A CORPORATION, PETITIONER

v.

JAMES P. MITCHELL, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The District Court dismissed respondent's amended complaint without making findings of facts or conclusions of law and without opinion (R. 48). The opinion of the Court of Appeals reversing the District Court's judgment (R. 57–66, 68) is reported at 210 F. 2d 879.

JURISDICTION

The judgment of the Court of Appeals was entered February 23, 1954 (R. 67). The petition for a writ of certiorari was filed on April

26, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether persons employed by a religious organization in its printing plant in preparing copy, printing, copyreading, proofreading, handling, working on and shipping magazines, pamphlets and other printed materials for interstate sale, and in clerical and maintenance work in connection therewith, are engaged in commerce or in the production of goods for commerce within the meaning of the Fair Labor Standards Act of 1938, as amended.

2. Whether application of the Act to workers employed full time in ordinary industrial occupations in a printing plant operated by a religious organization violates the free exercise of religion guaranteed by the First Amendment of the Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment of the Constitution is set forth on page 19 of the Appendix to the Petition for a Writ of Certiorari. Sections 3 (b), 6 (a), 7 (a) and 11 (c) of the Fair Labor Standards Act of 1938, as amended (c. 676, 52 Stat. 1060, c. 736, 63 Stat. 910, 29 U. S. C. Supp. V, 201 *et seq.*) are set forth on pages 16–18 of the Appendix to the Petition for a Writ of Certio-

rari. In addition, "produced" as used in the Act is defined by Section 3 (j) to mean:

> "* * * produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

STATEMENT

Petitioner is a church corporation organized under the laws of Indiana (R. 3) with its headquarters in the Pilgrim Building located in the business district of Indianapolis at 230 East Ohio Street (R. 10, 12). The Pilgrim Building is a five and one-half story building owned and operated by petitioner. The basement is occupied by a printing plant which petitioner owns and operates. The first floor is occupied by a mail order office and a book store, both of which are owned and operated by petitioner; the second and third floors contain the general offices of the various departments of the church, while the fourth and fifth floors are rented out as general office space (R. 10).

From this headquarters building petitioner operates an extensive and profitable printing and

publishing business known as the Pilgrim Publishing House (R. 12). The publications and materials printed and sold by petitioner are primarily of a religious character, but it also prints some secular materials of the type characteristic of ordinary commercial printing plants (R. 11–12). Its religious publications, pamphlets and other materials are sold to both its own member churches and Sunday schools, and to churches and Sunday schools of other denominations (R. 10–11). The secular materials printed include letterheads, insurance policy blanks, insurance riders and policy holder letters, calendar calling cards, post cards, greeting cards, stationery, wedding announcements, foreman reports, truck driver reports, college catalogues, meal tickets and price tags (R. 11–12).

A substantial portion of this printed material is sent through the mails every week to nearly all States of the United States and to some foreign countries. Petitioner's records show that, during the period from September 1950 to September 1952, the mail order departments made sales to customers in Indiana of $147,606.55, while sales to customers outside the State totaled $222,519.67 (R. 10).

The scope of petitioner's business activities is indicated by its announcement in the July 1952 issue of its official weekly publication that "our entire business total for the past year amounts to $327,024.14", consisting "chiefly of the sale of

Bibles, religious books and Sunday school literature" (R. 12–13). That petitioner's printing and publishing business is operated as a profit making enterprise is indicated by the fact, announced in the same publication, that "$125,000 [for the purchase price of the headquarters building and equipment] came from the profits of the Pilgrim Publishing House" (R. 12).

In its printing plant, petitioner employs 38 full time paid employees who are either engaged in the physical work of printing, in typing, copyreading and proofreading of material included in the publications, in shipping or mailing these materials, or in handling the various other duties related to these activities (R. 13). Thirteen of these employees are employed in the printing department, where they perform the duties of monotype caster operators, compositors, pressmen, folders, keyboard operators, cutter operators, binders and mailers (R. 13). Four of the employees are engaged in the typing of copy which goes into petitioner's publications and in copyreading and proofreading it (R. 13). One employee is engaged as a shipping clerk in the mail order department. He receives supplies from out-of-State sources and also physically ships petitioner's printed material to out-of-State customers (R. 13–14). Two employees perform the customary duties of janitors, including the sweeping and cleaning of the print shop and

editorial offices (R. 14). One employee is an elevator operator and regularly transports mail and other goods received from, and shipped to, points outside of Indiana (R. 14). Seventeen employees are engaged in such general administrative tasks as the preparation of the payrolls, the sending and receiving of mail from various sources, the receipt of moneys for subscriptions to petitioner's publications and for printing work performed for various customers, and the preparation and typing of mailing lists for petitioner's publications (R. 14).

This action was instituted by the Secretary of Labor to enjoin petitioner from violating Sections 6, 7, 11 (c), 15 (a) (2) and 15 (a) (5) of the Fair Labor Standards Act of 1938, as amended, by failing to pay the prescribed minimum wage to some employees, failing to pay overtime compensation to any employee, and failing to make and preserve proper wage and hour records. The District Court dismissed respondent's amended complaint without opinion (R. 48). The Court of Appeals reversed, holding that petitioner's printing plant employees "engaged in the preparation, printing and interstate shipment of printed materials * * * are * * * engaged in interstate commerce or in the production of goods for commerce," and that application of "a reasonable, nondiscriminatory regulation" such as the Fair Labor Standards Act "does not violate the Constitutional provisions guaranteeing the

free exercise of religion" (R. 60, 66). In ruling that petitioner's printing plant employees were covered by the terms and purpose of the statute, the court observed that although religion itself may not be commerce, "it still does not follow that a corporation organized for religious purposes may not engage in 'commerce' as defined in the Fair Labor Standards Act, that is, by engaging in 'trade, commerce, transportation, transmission, or communication among the several States'" (R. 62). On the constitutional issue, the Court of Appeals reasoned that "the rights of religion are not beyond limitations * * * in the interest of the whole community and of society," that the First Amendment's guarantees "are not violated by reasonable, nondiscriminatory regulation by governmental authority that preserves peace, order and tranquility," and that "the Fair Labor Standards Act is such a reasonable, nondiscriminatory regulation by an Act of Congress, a regulation in the interests of society for the welfare of all workers * * *." (R. 65-66). The court concluded: "We can find no reason for holding that the employees of a church corporation, who work in a printing establishment * * * should not be entitled to the benefits of this remedial legislation" (R. 64).

ARGUMENT

The decision below correctly applies the Fair Labor Standards Act and the rulings of this

Court construing that Act, and presents no conflict with any decision of any other court of appeals. Nor do we believe that the questions are at present of sufficient substance or general importance to call for review by this Court.

1. The holding that petitioner's printing plant employees are engaged in the production of goods for commerce within the meaning of the Act plainly accords with the statutory terms and purpose and with the decisions of this Court construing the scope of the Act's coverage. The printed materials in the instant case are "goods" or "articles or subjects of commerce," and are "transported" from the States where they are produced to a "place outside thereof," within the literal and plain meaning of the statutory definitions. Sections 3 (b) and 3 (i). Accordingly, petitioner's employees employed in the preparation, printing, and interstate distribution of such materials, including the clerical and maintenance work in connection therewith, are "engaged in commerce or in the production of goods for commerce." *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186; *Mabee* v. *White Plains Publishing Company*, 327 U. S. 178; *Kirschbaum Co.* v. *Walling*, 316 U. S. 517; *United States* v. *Darby*, 312 U. S. 100; and *Powell* v. *United States Cartridge Co.*, 339 U. S. 497.

Petitioner's contention that the Act is inapplicable because petitioner is not engaged in "industry" in the sense of "trade or business em-

ploying capital and labor for profit" (Pet. 28) ignores the specific terms and aims of this remedial legislation, as well as this Court's pertinent decisions. Even if it be assumed that petitioner's printing plant, despite its operation as a highly profitable business (R. 12), is not "commercial" in the ordinary sense, the Court has held that "there has been no attempt in the Act, or in this Court's discussion of the Act, to limit its coverage to employees engaged in producing goods solely for competitive markets" (*Powell* v. *United States Cartridge Co.*, 339 U. S. 497, at 509, n. 12). The constitutional scope and the statutory definition of "commerce" were regarded by this Court as broad enough "to regulate interstate shipments or transportation as such, and not merely to regulate shipments or transportation of articles that are intended for sale, exchange or other trading activities" (*id.* at 512). "Congress could have expressly exempted from the Act employees engaged in producing goods for interstate transportation not leading to a sale or exchange * * * However, Congress stated no such exemptions. On the contrary, Congress included, by express definition of terms, employees engaged in the production of goods for interstate *transportation*" (emphasis the Court's, *ibid.*). Had Congress intended to exempt religious and charitable organizations, such an exemption would presumably have been specifically provided along with the numerous other specific exemptions (see

Sections 13 and 3 (d)). As this Court stated in *Powell* v. *United States Cartridge Co., supra*, "Such specificity in stating exemptions strengthens the implication that employees not thus exempted * * * remain within the Act." 339 U. S. at 516–517.

The "implication" in this case that petitioner's employees "remain within the Act" is particularly strong in view of the express exemption accorded religious and charitable institutions in some of the other Federal legislation regulating labor conditions (see the express exemptions in the Old Age and Survivors Insurance provisions of the Federal Social Security Act, as well as the unemployment compensation provisions).[1] There is no such exception in the Fair Labor Standards Act. In the light of the long-standing legislative practice, "thoroughly familiar to Congress," to provide specific exemptions for religious and charitable organizations where such exemption is intended (see *International Reform Fed.* v. *District Unemployment Comp. Bd.*, 131 F. 2d 337, 341 (C. A. D. C.), certiorari denied, 317 U. S.

[1] 49 Stat. 620, 639, 643 (1935); 42 U. S. C. (1946 ed.) 1011 (b) (8), 1107 (c) (7). These provisions expressly exempt from the definition of "employment" "Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes * * *." See also D. C. Unemployment Compensation Act, Section 1 (b) (7), 49 Stat. 946, 1138, 46 D. C. Code 301 (1951 ed.).

693), there is special reason for application of the principle precluding "enlargement by implication" of the specific and detailed exemptions provided in the Fair Labor Standards Act. *Addison* v. *Holly Hill Co.*, 322 U. S. 607, 617; *Powell* v. *United States Cartridge Co.*, 339 U. S. 497, 517.

Moreover, regulatory labor legislation has been held applicable, in the absence of express statutory exemption, to the business and industrial employees of religious organizations. Thus, the National Labor Relations Act has been applied, without question, to a church printing plant virtually identical to petitioner's plant in the instant case. See *National Labor Relations Board* v. *Christian Board of Publication*, 113 F. 2d 678 (C. A. 8); *In re Sunday School Board of Southern Baptist Convention*, 92 N. L. R. B. 801. The Wisconsin Employment Peace Act was held applicable to a nonprofit church hospital in the *Evangelical Deaconess* case, 242 Wisc. 78, 7 N. W. 2d 590, notwithstanding the fact that the Act might result in some financial burden, "if it may be termed such" by "increasing wages to a fair standard or bringing conditions of work up to a proper standard." 242 Wisc. at 81, 7 N. W. 2d at 592. And see *Fleming* v. *Sunday School Publishing Board of the National Baptist Convention* (M. D. Tenn. Civil No. 90, 1940) where the Fair Labor Standards Act was applied, without contest, to a similar printing plant of a religious organization. See also *National Labor Relations Board* v. *Central*

Disp. & E. Hosp., 145 F. 2d 852 (C. A. D. C.), certiorari denied, 324 U. S. 847 (holding the National Labor Relations Act applicable to charitable hospitals on the grounds that the statutory definitions of "commerce" and "employer" were broad enough to include such hospitals);[2] *Preferment of Religious Institutions in Tax and Labor Legislation* by Monrad G. Paulsen, 14 *Law and Contemporary Problems* 144, at 157–158, 159.

2. The ruling of the court below that the Fair Labor Standards Act is "reasonable nondiscriminatory legislation * * * in the interest of society for the welfare of all workers," and that its application to the business and industrial employees of a religious organization does not violate the guarantees of the First Amendment, accords with this Court's decisions in *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186; *Mabee* v. *White Plains Publishing Co.*, 327 U. S. 178; *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103; *Prince* v. *Massachusetts*, 321 U. S. 158; and *Poulos* v. *New Hampshire*, 345 U. S. 395. In the *Oklahoma Press*, *White Plains Publishing Company* and *Associated Press*

[2] Subsequent to this decision, Congress amended the definition of "employer" so as to exclude charitable hospitals (Labor-Management Relations Act, 1947), Sec. 2 (2), 61 Stat. 136, 29 U. S. C., Supp. V, 152). It is of some significance that a similar proposed amendment to exclude *religious* organizations was deleted from the amendment as enacted. See H. Rept. 510, 80 Cong., 1st Sess., p. 3 (93 Cong. Rec. 6361).

cases, the Court specifically rejected the contention that the application of the Fair Labor Standards Act or the National Labor Relations Act to employees of newspaper publishers would violate the First Amendment's guarantee of freedom of speech or of the press. As the Court stated in the *White Plains Publishing Company* case, "The [First] Amendment does not forbid this or other regulation which ends in no restraint upon expression or in any other evil outlawed by its terms and purposes." 327 U. S. at 193.

The claim that the guarantee of free exercise of religion includes the right to maintain substandard working conditions for employees engaged in precisely the same kind of industrial occupations seems equally untenable. Neither the terms of the First Amendment, nor this Court's decisions construing the Amendment, warrant a distinction in this respect between the guarantees of freedom of religion and freedom of speech or of the press. *Prince* v. *Massachusetts*, 321 U. S. 158; *Poulos* v. *New Hampshire*, 345 U. S. 395.

Jamison v. *State of Texas*, 318 U. S. 413; *Murdock* v. *Pennsylvania*, 319 U. S. 105, and similar license tax cases on which petitioner relies, are clearly distinguishable and wholly inapposite. As the decision below points out, those cases involved either a "flat license tax" or a direct and absolute prohibition of the exercise of religion. "The Fair Labor Standards Act does not in this case *prohibit*

the free exercise of religion by the defendant nor does it lay a flat tax on the privilege" (opinion below, R. 63). Unlike the license tax statutes, this Act involves none of the evils of previous or direct restraint or censorship. The Court stated in the *Oklahoma Press* case that the Fair Labor Standards Act's regulation of low wages and long hours for employees in interstate commerce "ends in no restraint upon expression or in any other evil outlawed by its [the First Amendment's] terms and purposes." 327 U. S. at 193. Plainly, the Act is no more a restraint on the free exercise of religion than it is on freedom of speech or of the press.

3. Contrary to petitioner's assertions, the decision below does not have far-reaching effects but relates to a relatively small number of employees, *i. e.*, only those employed in the ordinary industrial occupations of the printing plant which in the instant case is plainly operated as a business and profit making enterprise. Petitioner's fears that the effect of the decision below may "totally destroy a very large part of religious work as it is carried on today" are, we believe, greatly exaggerated. At the oral argument in the court below, Government counsel expressly disclaimed any assertion of coverage of clergymen or ordained ministers, or of any of the church workers other than those employed in

connection with the printing plant. There has been no change in that position.

As noted above, there is no conflicting decision of any other court of appeals, and no similar cases pending in the lower courts. Under the circumstances we do not believe that the record in this case presents questions of sufficient substance or general importance to call for review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1954.